



**THE ATTORNEY GENERAL
OF TEXAS**

Gerald C. Mann

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ATTORNEY GENERAL

AUSTIN 11, TEXAS

Honorable B. F. McKee
County Auditor
Hidalgo County
Edinburg, Texas

Dear Sir:

Opinion Number 0-4816

Re: Under the facts set forth do the discounts correctly belong to the State of Texas or to the Hidalgo County issue when the sinking fund of the Hidalgo County issue supplied the funds from which the purchases of bonds were made?

We have your letter stating certain facts and requesting our opinion on the question stated. We quote from your letter as follows:

"Hidalgo County has outstanding an issue of Road and Bridge Bonds dated June 15, 1932, and maturing April 1, 1952 and it has been determined by the Board that the issue is 55% eligible for participation in the County and Road District Highway Fund. Inasmuch as the issue was in the original amount of \$1,099,000 and is a 'term' issue with no serial principal maturities, the Board has each year from 1933 to 1942 inclusive transferred from its available fund known as 'County and Road District Highway Fund' the sum of \$30,222.50 to a fund known as 'Hidalgo County Road and Bridge Refunding Bonds - Series 1932 - Sinking Fund'. Under the provisions of Section 6 (M) of the Road Board Act which reads in part as follows:

" * * * The Board of County and District Road Indebtedness shall have and possess full authority to invest all such sinking funds * * * in any eligible obligations of the various political sub-divisions of this State, which mature within the current biennium in which such securities are purchased and where there is on hand a sufficient amount of moneys or securities to the credit of any one political sub-division to retire some of its obligations,

whether then due or not, the Board of County and District Road Indebtedness may, if it deems it advisable, purchase and cancel said obligations of such particular political subdivision, irrespective of maturity dates * * *

"the Board has purchased various amounts of this issue from the funds so transferred, at various prices for cancellation. Due to the fact that the bonds were purchased at a discount in the total amount of \$44,097.87 we will appreciate your opinion as to whether or not the discounts correctly belong to the State of Texas or to the Hidalgo County issue, when the sinking fund of the Hidalgo County issue supplied the funds from which the purchases of bonds were made."

The general purpose of the State Aid Act is to repay the various counties and road districts for sums advanced for the construction of State highways. The Legislature did not make a gift or donation but undertook to fairly, justly and equitably compensate the counties and defined road districts, as stated in the following excerpt taken from Section 1 of the Act itself:

" * * * And it is hereby determined that the further provisions of this Act constitute fair, just, and equitable compensation, repayment, and reimbursement to said counties and defined districts and for their aid and assistance to the State in the construction of State Highways and for the construction of said roads which are ancillary to, but do not constitute a part of said system of State Highways, and fully discharges the legally implied obligations of the State to compensate, repay, and reimburse the agencies of the State for expenses incurred at the instance and solicitation of the State, as well as for expenses incurred for the benefit of the State, and fully discharges the State's legally implied obligation to such counties and defined road districts to provide additional funds for the further construction of roads not designated as a part of the State Highway System."

The extent of State eligibility or of its "legal and moral obligation" to compensate and reimburse such counties and defined road districts is clearly defined in Section 6(a) of the Act which reads in part as follows:

"All bonds, warrants or other evidences of indebtedness heretofore issued by counties * * * which mature on or after January 1, 1933, insofar as amounts of same were issued for and the proceeds have been actually expended in the construction of roads that constituted

and comprised a part of the system of designated State Highways on September 17, 1932 * * * shall be eligible to participate in the distribution of the moneys coming into said County and Road District Highway Fund * * *".

It was under this provision that the State Board ascertained and determined that 55% of the original amount of the issue under consideration had been expended upon roads that constituted a part of the State Highway System.

Subsection (c) of Section 6 provides, in part:

"It shall be the duty of the Board of County and District Road Indebtedness * * * to ascertain and determine the amount of indebtedness eligible under the provisions of this Section * * * to participate in the moneys coming into said County and Road District Highway Fund * * * And said obligation to said amount and extent shall be eligible for participation in the moneys coming into the County and Road District Highway Fund and ascertainment and determination shall be certified to the County Judge by said Board and all of the unmatured outstanding obligations of said issue shall ratably have the benefit of said participation in said moneys * * * The ascertainment and determination by the Board, after reasonable notice and hearing, of the amount of any county or defined road district obligation eligible under the provisions of this Act * * * shall be final and conclusive and shall not be subject to review in any other tribunal."

Subsection (j) of Section 6 of House Bill 6 of the Forty-seventh Legislature reads in part as follows:

"All moneys to be deposited to the credit of the County and Road District Highway Fund from September 1, 1941 to August 31, 1943, both inclusive, are hereby appropriated to said respective counties and road districts and shall be received, held, used and applied by the State Treasurer as Ex-officio Treasurer of said respective counties and defined road districts. * * * And each year thereafter until all of said eligible obligations are fully paid, all moneys coming into the credit of the County and Road District Highway Fund with the State Treasurer and all moneys remaining therein from the previous year shall be received and held by him as Ex-officio Treasurer of such counties and defined road districts. * * *"

Subsection (p) of Section 6 reads as follows:

"In the event this Act is repealed, or shall become inoperative as to any county or defined road district, then it shall be the duty of the Board to ascertain immediately the amount of moneys remaining on hand with it or with the State Treasurer belonging to the several counties or defined road districts affected, and forthwith to return the same to the County Treasurer of the county entitled thereto, accompanied by an itemized statement of the account of the county or defined road district."

It will be noted in Subsection (j) hereinabove quoted that the Legislature has expressly appropriated all moneys to the credit of the said counties and defined road districts and commands that it shall be received, held, used and applied by the State Treasurer as Ex-officio Treasurer of such counties for the purposes and uses specifically set forth in the Act and has further expressly provided that until all such obligations have been fully paid, the money coming into the County and Road District Highway Fund and such money as remains therein from the previous year are to be received and held by the State Treasurer as Ex-officio Treasurer of the county. This section seems clearly to characterize these funds as county funds. Subsection (p) seems to confirm the conclusion reached in the next preceding paragraph. It provides that the money remaining with the State Treasurer belonging to the several counties shall be returned to the County Treasurer, whenever the Act is repealed or shall be or become inoperative.

Subsection (q) reads as follows:

"All funds on hand belonging to, and hereafter credited to, the several counties and defined road districts of the State, shall be considered State funds, and as such shall be deposited at intervals in the depositories provided for by the State laws, and all interest earned on such funds and on the securities in which they are invested shall belong to said counties or defined road districts, and shall be credited to them by the State Treasurer as earned and collected."

Since the Legislature has declared that the interest on such funds shall belong to the counties, it is manifest that the funds belong to the counties, since the counties would not be entitled to interest earned on State funds.

It seems clear to us that the Board used funds belonging to Hidalgo County when it purchased and cancelled the bonds referred to in your letter, since the only authority we find in the Act for retiring unmatured bonds is found in Section 6 (m) which reads, in part, as follows:

" * * * The Board of County and District Road Indebtedness shall have and possess full authority to invest all such sinking funds, including all future sinking funds acquired in any manner whatsoever, in any eligible obligations of the various political subdivisions of this State, which mature within the current biennium in which such securities are purchased, and where there is on hand a sufficient amount of moneys or securities to the credit of any one political subdivision to retire some of its outstanding obligations, whether due or not, the Board of County and District Road Indebtedness may, if it deems advisable, purchase and cancel said obligations of such political subdivision, irrespective of maturity dates * * * ."

This subsection (m) authorizes the Board to invest any of the sinking funds in any eligible obligations of the various subdivisions which mature within the biennium in which the investment is made, but only authorizes the purchase and cancellation of unmatured bonds when it uses the funds belonging to the particular county or subdivision whose bonds are thus purchased and cancelled. No authority is found to retire obligations from any other fund. The purchases and cancellation of the bonds in question have been from funds of a particular subdivision, and the instant bonds are eligible in a certain percentage of their par value. If any of the bonds are acquired at less than their par value we think the saving should accrue to the county, and that the Board will still be obliged to pay such portion of the debt as it had previously determined to be eligible for participation.

At the time the bonds were made eligible for participation the Board set aside such funds as were contemplated to properly reimburse and compensate the county, and such previously determined obligation cannot be affected by a subsequent diminishing of the county's portion of the bonds.

You are, therefore, advised that in our opinion the payment by the State should be made on the basis of the par value of the bonds.

We are attaching a copy of our Opinion Number 0-3623, which deals with a somewhat similar question.

Very truly yours

ATTORNEY GENERAL OF TEXAS

Approved SEP 23, 1942

/s/ Gerald C. Mann
Attorney General of Texas

By /s/ C. F. Gibson
C. F. Gibson
Assistant

CFG/s:cm
Encls.

This Opinion
Considered and ap-
proved in limited
conference.